

Sheri L. Wainscott

From: Keith R. Powell
Sent: Saturday, November 21, 2015 4:14 PM
To: 'Robbie Ferris'
Subject: CORRECTED E: RF revisions to checked draft 11_20_2015
Attachments: EX B v2 - Final - (1)(1).pdf; Exhibit A - Final - (1).pdf; 673757_2 141 main - Final - (1)(1).pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Forget prior. Here they are. Remote computer not as simple as being there.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Keith R. Powell
Sent: Saturday, November 21, 2015 4:13 PM
To: 'Robbie Ferris'
Subject: RE: RF revisions to checked draft 11_20_2015

How are these? Will make changes for MB and SMS issues.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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(803) 254-4035

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Saturday, November 21, 2015 1:17 PM
To: Keith R. Powell
Subject: Fwd: RF revisions to checked draft 11_20_2015

Keith please see below, there are a few tweaks to what we sent you last night. It should simplify things a little and take some of the?'s that could arise later out

Sent from my iPhone

Begin forwarded message:

From: Aaron Thomas <athomas@metconus.com>
Date: November 21, 2015 at 1:15:16 PM EST
To: "Robert W. Ferris" <rferris@sfla.biz>
Subject: FW: RF revisions to checked draft 11_20_2015

Robbie- I just read this again and realized we had made a mistake that could cause confusion. The attached revision made 2 minor changes to what we sent last night:

1. On weather delays I deleted the reference to the 10 year NOAA average being a baseline we would compare to. I did this because if we are already using 2 days per month as the baseline for adverse weather all we need NOAA for is to substantiate the days over 2 so it is not subjective in nature with the staff. Example If we have 5 days of rain in December 2015 that is over .10" then we would turn in the NOAA report for the project locale showing we had the 5 days over .10 and we would get an extension via change order for 3. <(5) days over .10" – (2) days expected in contract = (3) days extension>
2. I also added ACT OF GOD Language to the 8.2.1. We talked about it but forgot to add it. Must have been tired.

Call me if you have any questions. I'm at the office.

Warm Regards,

Aaron Thomas, MCM, LEED-AP | President
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
office 910.521.8013 | mobile 910.734.0537 | email:athomas@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



AIA® Document A141™ – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

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(1715753780)

User Notes:

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the
(Paragraphs deleted)
Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000) for each occurrence and five million (\$ 5,000,000.00) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000) per claim and one million (\$ \$1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

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(1715753780)

The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

(Paragraph deleted)

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

(Paragraph deleted)

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

(Paragraphs deleted)

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

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cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

| *(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

| *(Paragraphs deleted)*

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This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2...

PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000) for each occurrence and five million (\$ 5,000,000.00) in the aggregate providing coverage for claims including

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.3 damages because of injury to or destruction of tangible property; property, and must contain the subcontractor exception to the "your work" exclusion;

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000) per claim and one million (\$ \$1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's 100% of contract value.

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professional liability insurance.

...
§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



AIA® Document A141™ – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the nineteenth day of November in the year two thousand fifteen (2015) (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91)

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the

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User Notes:

Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

[] Stipulated Sum, in accordance with Section A.1.2
(Paragraphs deleted)
below

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be forty-five million nine hundred thirty thousand two hundred twenty-seven dollars (\$ 45,930,227.00), subject to authorized adjustments as provided in the Design-Build Documents.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the day of the month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than () days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

(Paragraph deleted)

§ A.1.5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent (3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent (3.5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

| *(Paragraphs deleted)*

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

| *(Paragraph deleted)*

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

| § A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

| _____ calendar days from the issuance of a Notice to Proceed.

| *(Table deleted)*

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

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| Liquidated damages per A141-2014.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91. :

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraph deleted)

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

As stated in the Design Requirements (as amended by addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

.2 Project Manager

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

ARTICLE A.5 COST OF THE WORK

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.5.4 Other Agreements

§ A.5.4.1 [number not used]

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

John Gardner, Chief Financial Officer
(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member
(Printed name and title)

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Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:08:37 on 11/21/2015.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the nineteenth day of November in the year two thousand fifteen (2015) (the "Agreement")

...

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91)

...

(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,
335 Four Mile Rd.
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

PAGE 2

- [] Stipulated Sum, in accordance with Section A.1.2 below
[] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
[] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below
(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

...

§ A.1.2.1 The Stipulated Sum shall be forty-five million nine hundred thirty thousand two hundred twenty-seven dollars (\$ 45,930,227.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

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Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

...
§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:
month.

...
§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design Builder, less (2) that portion of those payments attributable to the Design Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

PAGE 3

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one/half percent (3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent (3.5 %);

...
§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design Builder's Fee, less retainage of _____ percent (____%). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of _____ percent (____%) from that portion of the Work that the Design Builder self performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design Builder on account of that portion of the Work for which the Design Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.7.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design Builder's Fee, less retainage of _____ percent (____%). The Design Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of _____ percent (____%) from that portion of the Work that the Design Builder self performs;
- .5 Subtract the aggregate of previous payments made by the Owner;

- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, requirements which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

...

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

...

calendar days from the issuance of a Notice to Proceed.

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

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Liquidated damages per A141-2014.

...

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following: Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91. :

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

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Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:

If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.

Title	Date	Pages
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Other identifying information:

...

As stated in the Design Requirements (as amended by addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.

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§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary

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benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.[number not used]

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below. Documents.

...

John Gardner, Chief Financial Officer

Robert Ferris, Authorized Member

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:08:37 on 11/21/2015 under Order No. 0239586208_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the twenty-third day of November in the year two thousand fifteen (2015).

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.

335 Four Mile Rd | PO Box 260005
Conway, SC 29528
District Office Phone 843.488.6700

and the Design-Builder:

(Name, legal status, address and other information)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

for the following Project:

(Name, location and detailed description)

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91)

Note: references to Owner's Request for Proposals No. 1415-91 include its addenda.

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Per "Design Requirements" published for Solicitation No. 1415-91 and . Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015.

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§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91 selected by the Horry County Board of Education on November 2, 2015. 1.

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91 selected by the Horry County Board of Education on November 2, 2015..

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91 selected by the Horry County Board of Education on November 2, 2015..

§ 1.1.5

Number not used.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015.

§ 1.1.7 The Owner's design and construction milestone dates:

(Paragraphs deleted)

Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601.

.2 Consultants

Per Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91.

.3 Contractors

Per Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

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| Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3) including all post-occupancy requirements published in the solicitation as amended by addenda.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)
Horry County Schools
Facilities Department, 1160 E Highway 50
Conway, SC 29526
843.488.6965

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

| Owner may utilize third party project management which will also receive submittals.

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

| To be determined by Owner. If retained, such consultants will be identified promptly..

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Robbie Ferris, S.C. AR.6106
FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225, Raleigh, NC 27601
919-573-6350

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

| [X] Litigation in a court of competent
(Paragraphs deleted)
jurisdiction, nonjury before a circuit judge in Horry County, SC.

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

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§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder may invoice the owner for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

(Paragraphs deleted)

§ 2.1 number not used]

(Paragraphs deleted)

(Table deleted)

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice.

(Paragraphs deleted)

The Owner will not pay interest on unpaid sums. This is a specific waiver of requirements of S.C. Code Ann. §§ 29-6-30 and 29-6-50.

(Paragraph deleted)

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

Building Permit and Other Permits and Fees: No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional

cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work. For each day (not counting Saturdays and Sundays, and not counting the day the Design-Builder submits its completed application to the authority) beyond five (5) days that a jurisdictional authority takes to respond to a permit application or similar permit request that is on the project's critical path, the Design Builder may claim one (1) additional day for the achievement of Substantial Completion.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts, errors, and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) in conjunction with the State Fire Marshal shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;

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- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner through its project management software data requirements.

§ 3.1.8.2 In

(Paragraphs deleted)

addition to the requirements of § 3.1.8.1, the Design-Builder shall provide similar information through in-person progress report presentations to the Horry County Board of Education each month during one of the Board's public meetings.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in

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writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

[Numbers §4.2 & §4.3 intentionally not used]

(Paragraphs deleted)

§ 4.4 Design-Builder's Construction Proposal

§ 4.4.1 The Design-Builder's Construction Proposal shall include the following:

- .1 A list of the documents and other information, including the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion ;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Construction Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

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§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

Maintenance of Record Drawings: The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

Professional Certifications: When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

Contractor's Quality Control Program: The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

- 1. Compliance with Employment Laws:** By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:
 - A. Title VII of the Civil Rights Act of 1964, as may be amended.
 - B. Age Discrimination in Employment Act of 1964, as may be amended.
 - C. Title I of the Americans Disabilities Act of 1990, as may be amended.
 - D. Equal Pay Act of 1963, as may be amended.
 - E. Fair Labor Standards Act, as may be amended.
 - F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
 - G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

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Employment Taxes and Benefits: Unless under order from the Internal Revenue Service or South Carolina state government, the District does not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

Project Key Staff – Project Manager: The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager or the duties and status of the Project Manager during the course of the project without approval of the District.

Project Key Staff -- Worksite Superintendent(s): The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

Worksite Communications: The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the

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Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a

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special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

§ 5.8 Documents and Submittals at the Site

In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The

Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.Change Order Allowable Pricing: For any change in contract price, the Contractor shall provide, itemize, and justify with appropriate supporting data, direct costs attributable to the change. Direct costs attributable to the change in work shall be limited to the following:

- A. Costs of materials, equipment and processes to be incorporated into the work including costs of shipping, handling, fabricating, sales tax (8% required in Horry County and 9% within certain incorporated parts of the City of Myrtle Beach as of August 1, 2009), or other such costs inherent in the provision and delivery of such materials, equipment and processes by the supplier or manufacturer.
- B. Costs of direct labor based on actual hourly labor rates multiplied by the actual work hours required to accomplish the change in work when such change in work results in additional contract time or labor. No Contractor or subcontractor shall ask for direct labor costs, when work required can be accomplished with the existing work force, in conjunction with other concurrent work, and during the current approved contract time. The hourly labor rate for any additional contract time or laborers shall

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- be actual hourly rates not to exceed thirty dollars (\$30) per hour unless documented proof of payment of a higher hourly rate for a specific skilled laborer is approved by the District prior to Change Order execution.
- C. Costs of fringe benefits for additional direct labor, including social security, unemployment or other taxes, health and workers' compensation insurances, or other benefits required by agreement, custom or applicable laws. Such fringe benefit rate shall not exceed twenty-eight percent (28%) and the District has the right to request itemized documentation proving the fringe benefit rate used.
 - D. Costs of machinery or equipment rented or leased in the short term specifically for completion of the additional work to be performed. Such equipment rented/leased shall not customarily be owned by the Contractor or any subcontractor affected by the change but shall be necessary to the accomplishment of the work required. Copies of invoices for such rental shall be provided to document the cost of rental or lease of machinery or equipment. The District shall not pay for use of Contractor- or subcontractor-owned equipment or machinery, which costs are included in the overhead computation.
 - E. Costs of permits or inspection fees directly attributable to the change in work and not included as part of the Contractor's requirements nor attributable to the Contractor's nonperformance or non-conformance to the Contract Agreement.
 - F. Other such direct costs directly attributable to the work and approved by the District.
 - G. Any additional cost resulting from an amendment to performance and payment bonds but in no event more than one percent (1%) after application of overhead and profit provided for elsewhere. The Contractor shall be responsible for notifying the Surety of any changes in the contract price, if required by the Surety.

Costs itemized shall not exceed the unit costs as listed in the most current issue of Means Construction Cost Data or actual costs justified to the satisfaction of the District.

Unallowable Costs: Any costs which may be perceived by the Contractor to be indirectly attributable to a change in work shall not be included in direct costs but shall be considered part of the overhead and profit rate applied to direct costs. Such costs not to be included in direct costs shall be, by way of illustration and not limitation:

- A. Labor hours and fringe benefit costs of the worksite superintendent(s) when such costs were included, or should have been included, in the original bid submitted or result from the Contractor's inability to meet the approved schedule or required completion date. The Contractor must prove, to the satisfaction of the District, such additional costs are directly attributable to any extension of time beyond the last approved completion date. An increase in contract price for additional site supervision shall be at the Districts' sole discretion.
- B. Perceived additional costs attributable to the Project Manager or supervision and coordination of subcontractors, suppliers or Contractor employees.
- C. Costs related to use, rental, purchase or replacement of equipment generally or customarily necessary to accomplish the work but not to be incorporated into the work such as, by way of illustration and not limitation, hand tools, generators, cleaning equipment, scaffolding, signage, fencing, vehicles, fuel, and so forth.
- D. Transportation or travel costs related to the transporting of hired or contracted supervisors, workers or subcontractors to and from the worksite or between worksites or to pick-up and deliver materials, equipment and processes to the worksite by the Contractor's or subcontractor's own forces including parking, tolls, fines, meals, per diem, hotel, living expenses, or other such costs.
- E. Costs attributable to expediting delivery of materials, equipment or processes including telephone calls, facsimile transmissions, copying, employee labor and benefits, and so forth.
- F. Costs attributable to maintaining a local office, home office or corporate office as well as office staffing, equipment and consumables, and so forth.
- G. Costs for maintaining on-site facilities, including work trailers, telephones, computers, licenses, temporal/ utilities, and so forth.
- H. Contracted services such as accountants, payroll service providers, attorneys, catering and so forth.
- I. Catering or vending services, portable toilets, dumpsters, and so forth.
- J. Other such indirect costs of doing business or costs normally considered inclusive in overhead.

Allowable Overhead and Profit Charges: Additional overhead and profit attributable to the change in contract

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pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.
- C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

Retainage: The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the Agreement and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the Agreement and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work.

Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

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§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing land development, zoning, and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal..

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

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The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

(Paragraph deleted)

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the two (2) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

ARTICLE 9. PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

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§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least TWENTY ONE days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

SEE § A.1.5.1.3 FOR SCHEDULE. In accordance with the schedule set forth in § A.1.5.1.3, the Owner issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;

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- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

(Paragraph deleted)

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be

extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall review the Work.. If the Owner's review discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another review of the Work by the Owner.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will obtain for the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly review the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The

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Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within the three-year duration of the Design-Builder's post-occupancy obligations, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During this period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 This year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 This period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project. . The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service for use in performing services or construction for the Project.

1.2.3.1 PROTOTYPE. The Owner shall have the right to use the Instruments of Service as a "prototype" design under South Carolina Board of Architectural Examiners regulations and policies. Any architect receiving the original plans from the Owner must first acknowledge and accept full responsibility for the adequacy of the design for its new project, as well as absolve the original Architect of any responsibility of any kind as relates to the original design. Should the Owner provide the Documents and/or Specifications to the Architect(s) for other Projects, then the original Architect, if not retained for the other project(s), shall be relieved of any liabilities arising out of the other Project(s) and the Owner will indemnify and hold harmless the original Architect from any Claims arising out of such other Project(s).

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason to obtain a limited, irrevocable and non-exclusive license for purposes of constructing, using, maintaining, altering and adding to the Project, subject to South Carolina regulations and policies concerning successor design professionals...

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

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§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on that executed Work, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

| *(Paragraph deleted)*

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work and otherwise available under this Agreement.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1:
(1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

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§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

| *(Paragraph deleted)*

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

| *(Paragraphs deleted)*

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

| The Contract shall be governed by the law of the place where the Project is located.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

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§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

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§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

Conduct of the Design-Builder's Principals, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Design Builder shall be responsible for ensuring compliance by the Design Builder and any employees, agents or representatives, or subcontractors of the Design-Builder, including all Design Consultants, to the following:

- A. **No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.**
 - B. **No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.**
 - C. **No improper attire, actions or gestures while on any District property.**
- No smoking on District property in conformance to Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. **Secure SLED (State Law Enforcement Division) criminal background checks on all the Design-Builder's Principals, employees, agents, and representatives, and subcontractors, performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives, or subcontractors, of the Design-Builder having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the Design-Builder and made available to appropriate District personnel or the District's legal counsel immediately upon request.**

Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional

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materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

Drug-Free Workplace

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

Right to Audit Project

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

Traffic Control On-Site and Off-Site: The Design-Builder shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Design-Builder shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

Safety Designee: The Design-Builder shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

Licenses and Permits: During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

Iran Divestment Act: The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11- 57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: [http://procurement.sc.gov/PS/PS-irandivestment.phtm\(.\)](http://procurement.sc.gov/PS/PS-irandivestment.phtm(.)) Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List

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Immigrant Workers: The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

SC IMMIGRATION LAW. S.C. Code § 8-14-40 Compliance: Design-Builder certifies that the Design-Builder will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
 - .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
 - .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
 - .4 Owner's Request for Proposals No. 1415-91 (with addenda) and Design-Builder's Proposal to the same as accepted by the Horry County Board of Education.
- (Paragraphs deleted)*
- .5 Post-Occupancy Requirements stated in Owner's Request for Proposals No. 1415-91.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Joe Defeo, Chair of the Board of Education
(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member
(Printed name and title)

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Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, October 14, 2015 12:25 PM
To: Robbie Ferris
Subject: HCS tomorrow

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

They asked for 2 pm so that's where I set it. Will get a info on remote participation.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, October 14, 2015 1:33 PM
To: Keith R. Powell
Subject: RE: HCS tomorrow

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Great, I assume its at the school board office, if possible send me a room number for the meeting.

-----Original Message-----

From: Keith R. Powell [mailto:kpowell@childshalligan.net]
Sent: Wednesday, October 14, 2015 12:25 PM
To: Robbie Ferris
Subject: HCS tomorrow

They asked for 2 pm so that's where I set it. Will get a info on remote participation.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, October 14, 2015 1:37 PM
To: Robbie Ferris
Subject: Re: HCS tomorrow

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

They're getting a room arranged now. At the district office someplace I'm sure.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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> On Oct 14, 2015, at 1:33 PM, Robbie Ferris <RFerris@sfla.biz> wrote:
>
> Great, I assume its at the school board office, if possible send me a room number for the meeting.
>
> -----Original Message-----
> From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
> Sent: Wednesday, October 14, 2015 12:25 PM
> To: Robbie Ferris
> Subject: HCS tomorrow
>
> They asked for 2 pm so that's where I set it. Will get a info on remote participation.
>
> Keith R. Powell
> Childs & Halligan, P.A.
> Columbia, South Carolina
> www.childs-halligan.com
> (803) 254-4035
>
>
> NOTICE: This e-mail may contain information that is personal and confidential, non-disclosable and protected by attorney-client privilege. If you have received this e-mail in error, this does not constitute permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

<image001.png>

From: Holly Heniford
Sent: Friday, October 23, 2015 1:50 PM
To: Kenneth L. Childs
Cc: Sherrie Todd; David Cox; Joe DeFeo; Neil James; Rick Maxey; Ara Heinz; Ray Winters
Subject: Re: Email to Firstfloor re: Negotiations

Thank you Ken for answering part of my question. I apologize if I was unclear and please forgive me for repeating myself. Currently is there any HSC employee (or contracted worker) working on the contract/construction terms of the new schools schedule to meeting with Thompson and Turner and/or Kahn that anytime in the future? I await a reply and to receive the emails that were sent out and long with any responses to Thompson and Turner and Kahn this week.

Thank you for your time and attention to this important matter.

Holly Heniford
HCS School Board

Sent from my iPad

On Oct 22, 2015, at 9:44 PM, Kenneth L. Childs <kchilds@childshalligan.net> wrote:

No meetings are scheduled until board meets & approves- ok? Ken

Sent from my iPhone

On Oct 22, 2015, at 9:41 PM, "Holly Heniford"
<HollyHeniford@horrycountyschools.net> wrote:

What about the ones that Thompson and Turner and Kahn. Is the staff currently scheduled to meet with Thompson and Tuner and/or Kahn this week? I know the Board Member I have spoken to want to know. We await the answer.

Sent from my iPad

On Oct 22, 2015, at 8:52 PM, Ara Heinz
<AHeinz@horrycountyschools.net> wrote:

Ms. Heniford,

Per Dr. Maxey's request, I am attaching a copy of the email that was sent to Firstfloor yesterday.

Please let me know if you have any questions.

Regards,
Ara

Ara Heinz | Procurement Services | ☎P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526

Website: Procurement.horrycountyschools.net

<image001.png>

<mime-attachment>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, December 02, 2015 2:59 PM
To: Clark, Brad
Cc: Keith R. Powell
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith, Mark Wolfe said that we needed to meet with John Gardner on the eighth. Has he mentioned that meeting to you, if not you may want to call him about the meeting.

Sent from my iPhone

On Dec 2, 2015, at 2:37 PM, Clark, Brad <Brad.Clark@BBandT.com> wrote:

Keith,

I am available on 12/8. Please let me know a convenient meeting time.

Does HCS have a quote/proposal from the SC IRF that we can review and compare to the coverage offered in the voluntary marketplace?

Brad Clark
919.281.4545 direct
678.612.7403 mobile

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How is 12/8?

Keith R. Powell
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www.childs-halligan.com
(803) 254-4035

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Sent: Monday, November 30, 2015 5:31 PM
To: Keith R. Powell
Cc: Robbie Ferris
Subject: RE: HCS | Exhibit B - Builder's Risk Coverage

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Sincerely,

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678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 18, 2015 12:56 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: FW: HCS | Exhibit B
Importance: High

Attached info for your use.

Keith R. Powell
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From: Ara Heinz
[<mailto:AHeinz@horrycountyschools.net>]
Sent: Wednesday, November 18, 2015 12:40 PM
To: Keith R. Powell
Subject: RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,
Ara

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net
<image001.png>

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From: "Clark, Brad"
 [<Brad.Clark@BBandT.com>](mailto:Brad.Clark@BBandT.com)
Date: November 17, 2015 at 5:30:59
PM EST
To: "Keith R. Powell"
 [<kpowell@childshalligan.net>](mailto:kpowell@childshalligan.net),
Robbie Ferris <RFerris@sfla.biz>
Subject: RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

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Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company
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days ago that I never sent you.
Sorry!!
Feel free to call Brad directly to
discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

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- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
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Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

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 4309 Emperor Blvd., Suite 300
 Durham, NC 27703
 919.281.4545 Direct
 678.612.7403 Cell
brad.clark@bbandt.com
 mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
919-281-4510 office
919-215-9779 cell
Via iPhone

Begin forwarded message:

From: Robbie Ferris
[<RFerris@sfla.biz>](mailto:RFerris@sfla.biz)
Date: November 17,
2015 at 9:55:52 AM
EST
To: Nancy Zablud
[<NZablud@sfla.biz>](mailto:NZablud@sfla.biz),
Mike Wawrzyniak
[<mwawrzyniak@sfla.
biz>](mailto:mwawrzyniak@sfla.biz), "Kenneth J.
Peeples"
[<kpeeples@bbandt.co
m>](mailto:kpeeples@bbandt.co
m), Aaron Thomas
[<athomas@metconus.
com>](mailto:athomas@metconus.
com), Mike Richter
[<mrichter@taloving.c
om>](mailto:mrichter@taloving.c
om)
Subject: Fwd: Hcs

Guys,
See attached exhibit B
in the email from
Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded
message:

From:
"Keith
R.
Powell
"
[<kpow
ell@ch
ilds-
halliga
n.net>](mailto:<kpow
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ilds-
halliga
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Date: November 17, 2015 at 9:55:52
AM EST
To: Nancy Zablud
NZablud@sfla.biz, Mike
Wawrzyniak
mwawrzyniak@sfla.biz, "Kenneth
J. Peeples"
kpeeples@bbandt.com, Aaron
Thomas athomas@metconus.com,
Mike Richter
mrichter@taloving.com
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email
from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R.
Powell"
kpowell@childshalligan.net
Date: November 17,
2015 at 9:47:32 AM
EST
To: "Robbie Ferris
(RFerris@sfla.biz)"
RFerris@sfla.biz,
Mark Wolfe
MWolfe002@horrycountyschools.net,
"Ara Heinz
(AHeinz@horrycountyschools.net)"
AHeinz@horrycountyschools.net, John
Gardner
JGardner@horrycountyschools.net,
Kenneth Generette
KGenerette@horryc

ountyschools.net>,
"rmaxey@horrycount
yschools.net"
<rmaxey@horrycount
yschools.net>
Ce: "William F.
Halligan"
<bhalligan@child-
halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft
attached for review &
comment. Waiting on
HCS comments on
141 and Ex A.

Keith R. Powell
Childs & Halligan,
P.A.
Columbia, South
Carolina
www.childs-
halligan.com
(803) 254-4035
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may contain
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confidential, non-
disclosable and
protected by attorney-
client privilege. If you
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permission to
examine, copy or
distribute the
accompanying
material. If you
receive this message
in error, please notify
us by telephone as
listed above
immediately.

On Nov 17, 2015, at
7:43 AM, Robbie

Ferris
<RFerris@sfla.biz>
wrote:

Keith
Can
you
send
the
latest
version
of the
contrac
t for
review
Robbie

Sent
from
my
iPhone

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<Builders Risk Considerations.pdf>

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, December 02, 2015 2:32 PM
To: Brad.Clark@BBandT.com; Robbie Ferris (RFerris@sfla.biz)
Subject: FW: HCS | Exhibit B - Builder's Risk Coverage

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

How is 12/8?

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Clark, Brad [<mailto:Brad.Clark@BBandT.com>]
Sent: Monday, November 30, 2015 5:31 PM
To: Keith R. Powell
Cc: Robbie Ferris
Subject: RE: HCS | Exhibit B - Builder's Risk Coverage

Keith,

I hope you had a great Thanksgiving holiday.

Do you have an update on the Builder's Risk coverage through the IRF? I have obtained formal terms from three insurers and I would be glad to meet with you and/or HCS staff to review the coverage offered by the IRF and compare to the coverage obtained in the voluntary marketplace to determine the most cost effective route while obtaining appropriate protection for the project and all parties.

Sincerely,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [mailto:kpowell@childshalligan.net]
Sent: November 24, 2015 5:12 PM
To: Clark, Brad
Cc: Robbie Ferris
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

That's probably best

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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On Nov 24, 2015, at 5:05 PM, Clark, Brad <Brad.Clark@BBandT.com> wrote:

Robbie,

I'm available Tuesday and Friday next week to meet with HCS staff to review insurance options.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: November 24, 2015 4:49 PM
To: Clark, Brad
Cc: Keith R. Powell
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

Brad

Would it make sense for you to meet with Hcs staff About insurance options next week Say wednsday

Sent from my iPhone

On Nov 24, 2015, at 2:03 PM, Clark, Brad <Brad.Clark@BBandT.com> wrote:

Keith,

I have received two quotes for Builder's Risk coverage from Zurich and AmRisc, and I should receive a third quote today from ACE. I will provide you with a spreadsheet comparing the three options and allow for HCS to compare the coverage to the coverage available through the IRF. I can also provide sample coverage forms.

A large factor in determining the cost of the Builder's Risk insurance is the # of months that coverage will be needed. **Do you know if HCS will want Builder's Risk coverage in force immediately or would like to wait until vertical construction/subsurface work to accommodate vertical construction begins?**

After review of the IRF coverage form, causes of loss form, and the flood and earthquake endorsements, I still have the same concerns as outlined in our original correspondence for protection of the Design-Builder.

- Damage to the project by a subcontractor would be covered by the IRF's Builder's Risk policy; however, the Builder's Risk insurer may look to 3rd party coverage to pay the claim which could lead to a delay on the project. We recommend providing the Design-Builder and subcontractors with a waiver of subrogation on the Builder's Risk policy as all covered claims will be First Party claims and should be settled much more swiftly.
- Materials at temporary storage facilities are not covered on the IRF policy.
- Materials must be within 100 feet of the described premises to be covered.
- Since the Design-Builder and subcontractors of all tier will not be Named Insured's on the IRF's policy, the word "you" and "your" as used in the policy only refer to HCS as a Named Insured.
 - Covered Property is defined in 1.b.(2) as "your building material and supplies used for construction". If HCS has not paid Firstfloor/their subcontractors for materials located at the site, it can be argued that those materials are considered Property of Others.
 - There is coverage limitation of \$2,500 of Property of Others
- Delay is not covered on the IRF policy. If a covered cause of loss on the Builder's Risk policy damages one or more schools, would HCS want insurance proceeds to pay for the extra expense to accommodate those students that were to occupy these schools?
- The endorsements that you provided indicate that coverage will extend for Flood and Quake.
- **Can you please confirm that the deductibles for Wind, Flood, and Quake will be \$1,000 as outlined in the coverage overview?**

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com

mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 18, 2015 2:20 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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From: Clark, Brad [<mailto:Brad.Clark@BBandT.com>]
Sent: Wednesday, November 18, 2015 2:17 PM
To: Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 18, 2015 12:56 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)

Subject: FW: HCS | Exhibit B
Importance: High

Attached info for your use.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Ara Heinz [mailto:AHeinz@horrycountyschools.net]
Sent: Wednesday, November 18, 2015 12:40 PM
To: Keith R. Powell
Subject: RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,
Ara

Ara Heinz | Procurement Services | ☎P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net
<image001.png>

From: Keith R. Powell [mailto:kpowell@childshalligan.net]
Sent: Tuesday, November 17, 2015 6:39 PM
To: Ara Heinz
Subject: Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: "Clark, Brad" <Brad.Clark@BBandT.com>
Date: November 17, 2015 at 5:30:59 PM EST
To: "Keith R. Powell" <kpowell@childshalligan.net>, Robbie Ferris <RFerris@sfla.biz>
Subject: RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [mailto:kpowell@childshalligan.net]
Sent: November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad
Subject: RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company sent me an email about this
a few days ago that I never sent you. Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM

To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
919-281-4510 office
919-215-9779 cell
Via iPhone

Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zablud <NZablud@sfla.biz>, Mike Wawrzyniak <mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>, Aaron Thomas <athomas@metconus.com>, Mike Richter <mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell"
<kpowell@childshalligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris
(RFerris@sfla.biz)"
<RFerris@sfla.biz>, Mark Wolfe
<MWolfe002@horrycountyschools.net>, "Ara Heinz
(AHeinz@horrycountyschools.net)"
<AHeinz@horrycountyschools.net>, John Gardner
<JGardner@horrycountyschools.net>, Kenneth Generette
<KGenerette@horrycountyschools.net>,
"rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan"
<bhalligan@childshalligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM,
Robbie Ferris <RFerris@sfla.biz>
wrote:

Keith
Can you send the
latest version of the
contract for review
Robbie

Sent from my iPhone

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<Builders Risk Considerations.pdf>

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, December 01, 2015 8:51 PM
To: Clark, Brad
Cc: Keith R. Powell
Subject: RE: HCS | Exhibit B - Builder's Risk Coverage

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith , do you want to set this up or shall I. I am meeting with staff tomorrow and I can ask them if you like.

From: Clark, Brad [mailto:Brad.Clark@BBandT.com]
Sent: Tuesday, December 01, 2015 4:34 PM
To: Robbie Ferris
Cc: Keith R. Powell
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

I am available any time on the 8th to meet.

Brad Clark
919.281.4545 direct
678.612.7403 mobile

On Dec 1, 2015, at 2:25 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

I will be at HCS on the 2nd , 4th and 8th...can we meet with them on one of these days

From: Clark, Brad [mailto:Brad.Clark@BBandT.com]
Sent: Monday, November 30, 2015 5:31 PM
To: Keith R. Powell
Cc: Robbie Ferris
Subject: RE: HCS | Exhibit B - Builder's Risk Coverage

Keith,

I hope you had a great Thanksgiving holiday.

Do you have an update on the Builder's Risk coverage through the IRF? I have obtained formal terms from three insurers and I would be glad to meet with you and/or HCS staff to review the coverage offered by the IRF and compare to the coverage obtained in the voluntary marketplace to determine the most cost effective route while obtaining appropriate protection for the project and all parties.

Sincerely,

Brad Clark, CIC
Vice President

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919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 24, 2015 5:12 PM
To: Clark, Brad
Cc: Robbie Ferris
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

That's probably best

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
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Robbie,

I'm available Tuesday and Friday next week to meet with HCS staff to review insurance options.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
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Durham, NC 27703
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Sent: November 24, 2015 4:49 PM
To: Clark, Brad
Cc: Keith R. Powell
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

Brad

Would it make sense for you to meet with Hcs staff About insurance options next week Say wednsday

Sent from my iPhone

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- Damage to the project by a subcontractor would be covered by the IRF's Builder's Risk policy; however, the Builder's Risk insurer may look to 3rd party coverage to pay the claim which could lead to a delay on the project. We recommend providing the Design-Builder and subcontractors with a waiver of subrogation on the Builder's Risk policy as all covered claims will be First Party claims and should be settled much more swiftly.
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brad.clark@bbandt.com
 mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 18, 2015 2:20 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell
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From: Clark, Brad [<mailto:Brad.Clark@BBandT.com>]
Sent: Wednesday, November 18, 2015 2:17 PM
To: Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 18, 2015 12:56 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: FW: HCS | Exhibit B
Importance: High

Attached info for your use.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]
Sent: Wednesday, November 18, 2015 12:40 PM
To: Keith R. Powell
Subject: RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,
Ara

Ara Heinz | Procurement Services | ~~PP~~P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526

Website: Procurement.horrycountyschools.net
<image001.png>

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: Tuesday, November 17, 2015 6:39 PM
To: Ara Heinz
Subject: Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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(803) 254-4035

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Begin forwarded message:

From: "Clark, Brad" <Brad.Clark@BBandT.com>
Date: November 17, 2015 at 5:30:59 PM EST
To: "Keith R. Powell" <kpowell@childshalligan.net>, Robbie Ferris <RFerris@sfla.biz>
Subject: RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell

brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad
Subject: RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.

- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC
 Vice President
 BB&T Insurance Services
 4309 Emperor Blvd., Suite 300
 Durham, NC 27703
 919.281.4545 Direct
 678.612.7403 Cell
brad.clark@bbandt.com
 mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
 919-281-4510 office
 919-215-9779 cell
 Via iPhone

Begin forwarded message:

From: Robbie Ferris
<RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52
AM EST
To: Nancy Zablud
<NZablud@sfla.biz>, Mike
Wawrzyniak
<mwawrzyniak@sfla.biz>, "Kenneth
J. Peeples"
<kpeeples@bbandt.com>, Aaron
Thomas <athomas@metconus.com>,
Mike Richter
<mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email
from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R.
Powell"
<kpowell@childshalligan.net>
Date: November 17,
2015 at 9:47:32 AM
EST
To: "Robbie Ferris
(RFerris@sfla.biz)"
<RFerris@sfla.biz>,
Mark Wolfe
<MWolfe002@horrycountyschools.net>,
"Ara Heinz
(AHeinz@horrycountyschools.net)"
<AHeinz@horrycountyschools.net>, John
Gardner
<JGardner@horrycountyschools.net>,
Kenneth Generette
<KGenerette@horrycountyschools.net>,
"rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>

yschools.net>
Cc: "William F.
Halligan"
<bhalligan@childshalligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft
attached for review &
comment. Waiting on
HCS comments on
141 and Ex A.

Keith R. Powell
Childs & Halligan,
P.A.
Columbia, South
Carolina
www.childshalligan.com
(803) 254-4035
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disclosable and
protected by attorney-
client privilege. If you
have received this e-
mail in error, this
does not constitute
permission to
examine, copy or
distribute the
accompanying
material. If you
receive this message
in error, please notify
us by telephone as
listed above
immediately.

On Nov 17, 2015, at
7:43 AM, Robbie
Ferris
<RFerris@sfla.biz>
wrote:

Keith

Can
you
send
the
latest
version
of the
contrac
t for
review

Robbie

Sent
from
my
iPhone

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<Builders Risk Considerations.pdf>

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, December 01, 2015 8:54 PM
To: Robbie Ferris
Cc: Clark, Brad
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Go ahead. I sent a request and have not been answered.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Dec 1, 2015, at 8:51 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith , do you want to set this up or shall I. I am meeting with staff tomorrow and I can ask them if you like.

From: Clark, Brad [<mailto:Brad.Clark@BBandT.com>]
Sent: Tuesday, December 01, 2015 4:34 PM
To: Robbie Ferris
Cc: Keith R. Powell
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

I am available any time on the 8th to meet.

Brad Clark
919.281.4545 direct
678.612.7403 mobile

On Dec 1, 2015, at 2:25 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

I will be at HCS on the 2nd , 4th and 8th...can we meet with them on one of these days

From: Clark, Brad [mailto:Brad.Clark@BBandT.com]
Sent: Monday, November 30, 2015 5:31 PM
To: Keith R. Powell
Cc: Robbie Ferris
Subject: RE: HCS | Exhibit B - Builder's Risk Coverage

Keith,

I hope you had a great Thanksgiving holiday.

Do you have an update on the Builder's Risk coverage through the IRF? I have obtained formal terms from three insurers and I would be glad to meet with you and/or HCS staff to review the coverage offered by the IRF and compare to the coverage obtained in the voluntary marketplace to determine the most cost effective route while obtaining appropriate protection for the project and all parties.

Sincerely,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [mailto:kpowell@childshalligan.net]
Sent: November 24, 2015 5:12 PM
To: Clark, Brad
Cc: Robbie Ferris
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

That's probably best

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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On Nov 24, 2015, at 5:05 PM, Clark, Brad <Brad.Clark@BBandT.com> wrote:

Robbie,

I'm available Tuesday and Friday next week to meet with HCS staff to review insurance options.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: November 24, 2015 4:49 PM
To: Clark, Brad
Cc: Keith R. Powell
Subject: Re: HCS | Exhibit B - Builder's Risk Coverage

Brad
Would it make sense for you to meet with Hcs staff About
insurance options next week Say wednsday

Sent from my iPhone

On Nov 24, 2015, at 2:03 PM, Clark, Brad
<Brad.Clark@BBandT.com> wrote:

Keith,

I have received two quotes for Builder's Risk coverage from Zurich and AmRisc, and I should receive a third quote today from ACE. I will provide you with a spreadsheet comparing the three options and allow for HCS to compare the coverage to the coverage available through the IRF. I can also provide sample coverage forms.

A large factor in determining the cost of the Builder's Risk insurance is the # of months that coverage will be needed. **Do you know if HCS will want Builder's Risk coverage in force immediately or would like to wait until vertical construction/subsurface work to accommodate vertical construction begins?**

After review of the IRF coverage form, causes of loss form, and the flood and earthquake endorsements, I

still have the same concerns as outlined in our original correspondence for protection of the Design-Builder.

- Damage to the project by a subcontractor would be covered by the IRF's Builder's Risk policy; however, the Builder's Risk insurer may look to 3rd party coverage to pay the claim which could lead to a delay on the project. We recommend providing the Design-Builder and subcontractors with a waiver of subrogation on the Builder's Risk policy as all covered claims will be First Party claims and should be settled much more swiftly.
- Materials at temporary storage facilities are not covered on the IRF policy.
- Materials must be within 100 feet of the described premises to be covered.
- Since the Design-Builder and subcontractors of all tier will not be Named Insured's on the IRF's policy, the word "you" and "your" as used in the policy only refer to HCS as a Named Insured.
 - Covered Property is defined in 1.b.(2) as "your building material and supplies used for construction". If HCS has not paid Firstfloor/their subcontractors for materials located at the site, it can be argued that those materials are considered Property of Others.
 - There is coverage limitation of \$2,500 of Property of Others
- Delay is not covered on the IRF policy. If a covered cause of loss on the Builder's Risk policy damages one or more schools, would HCS want insurance proceeds to pay for the extra expense to accommodate those students that were to occupy these schools?
- The endorsements that you provided indicate that coverage will extend for Flood and Quake.
- **Can you please confirm that the deductibles for Wind, Flood, and Quake will be \$1,000 as outlined in the coverage overview?**

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell

brad.clark@bbandt.com

mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]

Sent: November 18, 2015 2:20 PM

To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)

Subject: RE: HCS | Exhibit B

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Clark, Brad [<mailto:Brad.Clark@BBandT.com>]
Sent: Wednesday, November 18, 2015 2:17 PM
To: Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)
Subject: RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703

919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: November 18, 2015 12:56 PM
To: Clark, Brad; Robbie Ferris (RFerris@sfla.biz)
Subject: FW: HCS | Exhibit B
Importance: High

Attached info for your use.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]
Sent: Wednesday, November 18, 2015 12:40 PM
To: Keith R. Powell
Subject: RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,
Ara

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net
<image001.png>

From: Keith R. Powell [<mailto:kpowell@childshalligan.net>]
Sent: Tuesday, November 17, 2015 6:39 PM
To: Ara Heinz
Subject: Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: "Clark, Brad"
[<Brad.Clark@BBandT.com>](mailto:Brad.Clark@BBandT.com)
Date: November 17, 2015 at 5:30:59
PM EST
To: "Keith R. Powell"
[<kpowell@childshalligan.net>](mailto:kpowell@childshalligan.net),
Robbie Ferris <RFerris@sfla.biz>
Subject: RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Keith R. Powell
[mailto:kpowell@childshalligan.net]

Sent: November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad
Subject: RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris
[mailto:RFerris@sfla.biz]
Sent: Tuesday, November 17, 2015
12:22 PM
To: Keith R. Powell
Cc: Clark, Brad
(Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company sent me an email about this a few days ago that I never sent you.
Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers

should have insured status on the Builder's Risk policy in order to ensure your interests are protected.

- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 03, 2015 3:57 PM
To: William F. Halligan
Subject: Fwd: HCS DRAFT Written Determination, Nov. 3, 2015
Attachments: Written Determination.pdf; ATT00001.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: Joe DeFeo <JoeDefeo@horrycountyschools.net>
Date: November 3, 2015 at 3:52:12 PM EST
To: "Keith R. Powell" <kpowell@childshalligan.net>, Rhonda Snowden <RSnowden@horrycountyschools.net>, Ken Childs <kchildshalligan.net>
Cc: Rick Maxey <RMaxey@horrycountyschools.net>, Ara Heinz <AHeinz@horrycountyschools.net>, Janice Morreale <JaniceMorreale@horrycountyschools.net>
Subject: Re: HCS DRAFT Written Determination, Nov. 3, 2015

If anyone finds anything wrong... Please let me know asap... Thank you....

Joe DeFeo

Chairman

Horry County School Board

843-222-5912

Democracy=Two Wolves and a Lamb voting on what's for dinner!!!

From: Keith R. Powell <kpowell@childshalligan.net>
Sent: Tuesday, November 3, 2015 3:21 PM
To: Joe DeFeo
Cc: Rick Maxey; Ara Heinz
Subject: Re: HCS DRAFT Written Determination, Nov. 3, 2015

Okay that works

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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On Nov 3, 2015, at 3:09 PM, Joe DeFeo <JoeDefeo@horrycountyschools.net> wrote:

Yes... But it wont be before 5. I can put it on letterhead and get her the original tomorrow. I do want the letter of intent posted today.

Joe DeFeo

Chairman

Horry County School Board

843-222-5912

Democracy=Two Wolves and a Lamb voting on what's for dinner!!!

From: Keith R. Powell <kpowell@childshalligan.net>
Sent: Tuesday, November 3, 2015 3:07 PM
To: Joe DeFeo
Cc: Rick Maxey; Ara Heinz
Subject: Re: HCS DRAFT Written Determination, Nov. 3, 2015

Can you go by the office so they have an original? I think Rhonda is expecting to put on letterhead.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

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On Nov 3, 2015, at 3:01 PM, Joe DeFeo
<JoeDefeo@horrycountyschools.net> wrote:

Keith, Can you make the corrections as noted by Ara and email to ASAP. I will sign-scan and send back to all...

Joe DeFeo

Chairman

Horry County School Board

843-222-5912

Democracy=Two Wolves and a Lamb voting on what's for dinner!!!

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 04, 2015 9:03 AM
To: Keith R. Powell
Subject: Fwd: 1415-91 Notices of Intent to Award
Attachments: ATT00001.htm; 1415-91 NOI CFM.pdf; ATT00002.htm; 1415-91 NOI MBM.pdf; ATT00003.htm; 1415-91 NOI SES.pdf; ATT00004.htm; 1415-91 NOI SJI.pdf; ATT00005.htm; 1415-91 NOI SMS.pdf; ATT00006.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Sent from my iPhone

Begin forwarded message:

From: Ara Heinz <AHeinz@horrycountyschools.net>
Date: November 3, 2015 at 5:14:12 PM EST
To: Robbie Ferris <RFerris@sfla.biz>, "rferris@firstfloor.biz" <rferris@firstfloor.biz>
Cc: Danielle Davis <ddavis@sfla.biz>
Subject: 1415-91 Notices of Intent to Award

Mr. Ferris,

Please find attached the Notices of Intent to Award from Horry County Schools for the Design-Build Delivery of New School Facilities projects (# 1415-91). Barring any protests or issues with providing the information listed in the NOI, the official contract could be executed and go into effect on November 19, 2015. (The NOI's have also been uploaded to our website at <http://apps.hcs.k12.sc.us/apps/protrac/>.)

I am sure that either our attorneys or someone from the District will be in contact with you soon to discuss the next steps, but if you have any questions or concerns about documents, communications, procedures, etc., please do not hesitate to contact me.

Thank you for participating in this solicitation! We look forward to working with you and your team on this project!

Regards,
Ara

Ara Heinz | Procurement Services | ☎P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 06, 2015 10:25 AM
To: Robbie Ferris
Subject: RE: Horry

Follow Up Flag: Follow up
Flag Status: Flagged

Does not sound like they are interested.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Thursday, November 05, 2015 10:50 AM
To: Keith R. Powell
Subject: Horry

Any chance we can get owner to sign early site packages so we can formally submit

Sent from my iPhone

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William R. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams
Thomas K. Barlow**

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
Post Office Box 11367, Columbia, SC 29211-1367

Telephone (803) 254-4035
Facsimile (803) 771-4422

November 9, 2015

Allison Aiken Hanna
Keith R. Powell***
Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain++
Dwayne T. Mazyck
Tyler R. Turner
Mary Allison Caudell
†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
++Also admitted in Georgia

Rick Maxey, Ph.D.
Superintendent
Horry County Schools
P.O. Box 26005
Conway, SC 29528

Re: Batson Associates, Inc.

Dear Rick:

I have enclosed the statements for Batson Associates, Inc. for the months of September and October 2015, with the request that the Horry County School District pay these statements directly.

During September, Mr. Batson closely studied all of the drawings and documents submitted by three design-build firms for each of the five schools and met with the Committee on September 8, 15, and 24th. His involvement was crucial and intense and provided the Committee with an independent professional evaluation so that the district staff could fulfill their roles without additional burdens.

Bick and Keith are both aware that Louis spent the time described on the project. Please call us with any questions. Thank you.

Sincerely,

Kenneth L. Childs
kchilds@childshalligan.net

/dsr
Enclosures

c: William F. Halligan, Esq.



Batson Associates, Inc.
 415 West Washington Street
 Greenville, SC 29601
 864-233-2232

Childs & Halligan Law Firm
 Attn: Mr. Blc Halligan
 P O Box 11367
 Columbia, SC 29211-1367

Invoice number 102736
 Date 10/01/2015

Project 2014-73 E Horry County School
 District - Expert Witness

TERMS: Net Upon Receipt

For Architectural Services Rendered from September 1, 2015 through September 30, 2015.

Professional Fees

	Hours	Rate	Billed Amount
Principal In Charge			
Louis P. Batson III	116.00	300.00	34,800.00
<i>prep for proposal review</i>			
<i>research re: ground source heat pumps</i>			
<i>review proposals for completeness</i>			
<i>review proposals for completeness</i>			
<i>review proposals for content</i>			
<i>travel to/from conway</i>			
<i>mtg w/k.childs+k.powell, mtg w/selection comm.</i>			
<i>review proposals for content, identify+tab relevant info</i>			
<i>review proposals, Identify areas for review by engrs+comm.</i>			
<i>review issuesfor consideration, prepare draft of template</i>			
<i>prep for mtg on 9/15</i>			
<i>travel to conway, meet w/k.childs+k.powell, meet w/committee for proposal evaluation and discuss ranking</i>			
<i>meet w/m.wolfe+dennis re:sefaira, document review, and proposal evaluations.</i>			
<i>review st.james+mb mldde proposals for similarities and difference with carolina forest</i>			
<i>review and evaluate hvac systems, prepare talking points for prelim rankings</i>			
<i>review and evaluate electrical/high perf and energy positive, talking points for preliminary rankings</i>			
<i>review sefaira data and prelim rankings</i>			
<i>prep, travel to/from conway, meet with k.childs+k.powell and mtg w/evaluation committee</i>			
<i>review proposals for lpb3 scoring, identify kahn references to onsite PV, tel w/j.defeo and attys.</i>			
<i>develop scoring for proposals, tel w/j.defeo and attys. review submittals for interview questions.</i>			
Administration			
Alethea Peebles	4.00	75.00	300.00
Professional Fees subtotal	120.00		35,100.00

Reimbursables

	Date	Units	Rate	Billed Amount
Mileage				
<i>Site Visit Mileage 09/08/15 - Columbia</i>	09/08/2015	210.00	0.63	132.30
<i>Site Visit Mileage 09/15/15 - Conway</i>	09/15/2015	474.00	0.63	298.62



b a t s e l l
a s s o c i a t e s

Childs & Halligan Law Firm
Project 2014-73 E Horry County School District - EXPERT WITNESS

Invoice number 102736
Date 10/01/2015

Reimbursables

	Date	Units	Rate	Billed Amount
Mileage	09/24/2015	474.00	0.63	298.62
Site Visit Mileage 09/24/15 - Conway				
Subtotal				729.54
Reimbursables subtotal				729.54
				Invoice total 35,829.54

If payment is not received within 30 days, a finance charge of 1 1/2% per month will be added to your balance. This is based on an annual percentage rate of 18%.



batson
associates

Batson Associates, Inc.
415 West Washington Street
Greenville, SC 29601
864-233-2232

Childs & Halligan Law Firm
Attn: Mr. Blc Halligan
P O Box 11367
Columbia, SC 29211-1367

Invoice number 102768
Date 11/02/2015

Project 2014-73 E Horry County School
District - Expert Witness

TERMS: Net Upon Receipt

For Architectural Services Rendered from October 1, 2015 through October 31, 2015.

Professional Fees

	Hours	Rate	Billed Amount
Principal In Charge			
Louis P. Batson III	12.50	300.00	3,750.00
<i>Q&A for interview finalize commentary, Q&A review Defeo e-mail and tel w/k.childs, k.powell</i>			Invoice total 3,750.00

If payment is not received within 30 days, a finance charge of 1 1/2% per month will be added to your balance. This is based on an annual percentage rate of 18%.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 10, 2015 1:26 PM
To: William F. Halligan
Subject: Horry contracts drafts
Attachments: RE: Horry School Projects; RE: Horry School Projects; RE: Horry School Projects

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 11, 2015 10:54 AM
To: Robbie Ferris
Subject: RE: Hcs new schools early site packages

Follow Up Flag: Follow up
Flag Status: Flagged

Sentiment is not to do anything unusual. You should build your schedules from the 19th I guess, or maybe the 20th if that is when you will have business license, insurance and bonds.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Monday, November 09, 2015 5:18 PM
To: Keith R. Powell; Ara Heinz <AHeinz@horrycountyschools.net>
Cc: Danielle Davis; Mike Wawrzyniak; Ryan Parker; JOHN H.RICHARDS
Subject: Hcs new schools early site packages

Keith/ Ara,

We would very much like to submit the early site packages for agency approval as soon as possible. Every day gained on the front end of the project is a day gained at the back end of the project. Please consider our request to have the owner sign the early site package applications so we can submit them sooner than later. We fully understand that our submission of these early site packages would be done at risk.

Thank you for your consideration of this request.

Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 5:01 PM
To: Keith R. Powell
Subject: Firstfloor

Follow Up Flag: Follow up
Flag Status: Flagged

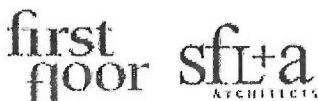
Keith,

Firstfloor energy positive has 3 member managers. This allows any of the 3 managers to sign for the company.

I will be the primary

Richard Green and Eric Lindstrom are also member managers and can sign for the company. Apparently some smart lawyer suggested this so that documents could still be signed if someone goes on vacation etc...Vacations are not common occurrences with me so it will not likely be an issue.

Robbie



Robert W. Ferris, AIA, REFP, LEED AP

CEO/President

333 Fayetteville Street, Suite 225

Raleigh, NC 27601

Cell: 919.610.2251

Fax: 919.573.6355

rferris@sfla.biz

www.sfla.biz

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Wednesday, November 11, 2015 9:08 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Keith,

I might have been looking at the wrong document but it looks like you made a lot of changes to the contract issued in the RFP. Most of the changes are fine but here are a few thoughts.

Our insurance carriers are still reviewing the contract and I will get you their comments, if any asap:

- 1.1.3-The projects physical characteristics should refer back to the design builders proposal
- 1.1.9- This should also reference the design builders proposal
- 1.4.1-The design build proposal should be attached to make it a part of the design build documents
- 2.1- I would prefer to leave this article in the contract. Our team members relied on this provision being in the contract when developing the proposal.
- 2.1.4.1- With this project moving as fast as it is supposed to move, paying within 30 days is far more reasonable than 45 days. Is there a reason HCS can't pay within 45 days. We usually try to pay contractors within 7 days on projects that we own and it is serious motivator. When you pay fast you have lots of leverage with subs.
- 2.1.4.1-Some interest should be paid on late payments. 1% per month is normal. Do they have problems with paying their bills on time?
- 5.7.2- Line 5 and line 7 - can we change 14 days to 7 days – this job needs to move fast.
- 5.14.3- Why would the owner not be responsible to the DB if the owners consultant damage the work. For example- the owners technology contractor destroys the ceilings the day before the building opens. Why should the owner not be responsible to the design builder in this case?
- 6.3.7- Can we add language that clarifies that the post occupancy services will not delay closeout and release of retainage.
- 7.2.3-Is there a reason that you deleted zoning variances? I doubt a variance is required but unless I am missing something the owner is responsible for getting variances if required.
- 9.7 – Given the speed of this project can we change this back to 7 days
- 10.3- According to the addendum I recall that the owner is responsible for removal of Haz Mat at MB middle. Should we acknowledge this in the contract so that everyone is clear about this?
- 12.3.2- I don't think it's reasonable for the owner to be able to terminate the contract and then use the construction documents and, further, if there is a problem make the Design Builder and Architect responsible for that problem. I would leave this "as is" in the original contract.
- 13.2.4.3- Why is it not fair for the DB to make a reasonable profit if the owner cancels the contract. We could define what reasonable is if you would be more comfortable.
- A.3.1.6- Design Builders assumptions and clarifications:
The design builders proposal dated xxx is acceptable to the owner and is determined by the owner to comply with the requirements of the RFP.
- A.4.1.and A.4.2 We will get you the info to fill in blanks asap.



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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Thursday, November 12, 2015 10:12 AM
To: Robbie Ferris
Subject: RE: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

Keith R. Powell
Childs & Halligan, P.A.
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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 5:20 PM
To: Keith R. Powell
Subject: Horry county schools

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith

This relates back to Our proposal taking precedent over the RFP. We had additional allowances in our proposal that were not outlined in the RFP. For example we had \$200,000 for landscaping in our proposal.

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Thursday, November 12, 2015 9:06 PM
To: Keith R. Powell
Subject: Re: HCS contracts
Attachments: image001.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok

I understand, I will go back and look at my rfp version again
I do think many of my comments would accrue to the benefit of the district
As well as to us
Robbie

Sent from my iPhone

On Nov 12, 2015, at 10:12 AM, Keith R. Powell <kpowell@childshalligan.net> wrote:

Thanks. I ran it in "variance check" mode this time, so as I told your colleagues, it looks quite different from the earlier version but I didn't actually change all that much in the text. I think a lot of these were in the one published in the addendum, but that does not mean we cannot make reasonable adjustments. However I'll have to do more discussions with HCS about anything that changes from the original that is not just filling in blanks.

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<image001.png>

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"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 12:15 PM
To: Keith R. Powell
Subject: Horry allowance

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

I recall the board approving funds to restore the owner contingency. I assume that contingency will be held outside of our contract, however if we want it inside of our contract for some reason we can do that but we would have to increase The contract amount by the amount of the owner contingency. I am fine with it either way.

Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Would it make sense if you set up a meeting for next Thursday where we go to Horry and I and the owner sign contracts?

I am told, by subcontractors, that the normal procedure in Horry County is that if applications for payment are received by the 23rd you get paid by the 10th. You might want to confirm that the 23rd is there magic date for applications for payment.

Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
Superintendent: Phil Asslynn
Project Manager: Mike Dickman
Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC
Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	total not including
the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$ 25,465,000



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Sheri L. Wainscott

From: Keith R. Powell
Sent: Friday, November 13, 2015 3:42 PM
To: Robbie Ferris
Subject: Re: HCS contracts
Attachments: image002.png

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Not a bad idea. I have morning booked up Thursday but could probably arrive mid afternoon.

Working on the owner rep issue.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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(803) 254-4035

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On Nov 13, 2015, at 3:10 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

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Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

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Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
Superintendent: Phil Asslynn
Project Manager: Mike Dickman
Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC
Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	to
tal not including the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$
25,465,000						

<image002.png>

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Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:43 PM
To: Keith R. Powell
Subject: Re: HCS contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ok
Let me know

Sent from my iPhone

On Nov 13, 2015, at 3:42 PM, Keith R. Powell <kpowell@childshalligan.net> wrote:

Not a bad idea. I have morning booked up Thursday but could probably arrive mid afternoon.

Working on the owner rep issue.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childshalligan.com
(803) 254-4035

NOTICE: This e-mail may contain information that is personal and confidential, non-disclosable and protected by attorney-client privilege. If you have received this e-mail in error, this does not constitute permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

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St James IS

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<image002.png>

Robert W. Ferris, AIA, REFP, LEED AP
 CEO/President
 Sfl+a Architects
 333 Fayetteville Street, Suite 225
 Raleigh, NC 27601
 Cell: 919.610.2251
 Fax: 919.573.6355
rferris@sfla.biz
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<image002.png>

Sheri L. Wainscott

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Attachments: HCS - 4 School Combo - Schedule 09.01.15.pdf; HCS - 5 School Combo - 11.11.15 REV#1.pdf

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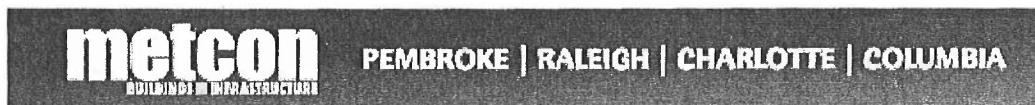
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 - Revised 11/19 thru 6/7 - 566
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 - Original 4 School combo schedule didn't include elementary.

With Regards

Ryan Parker | Senior Project Manager
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
 office 910.521.8013 | mobile 910.374.2766 | email:rpatrick@metconus.com
 website | [linkedin](#) | [twitter](#) | [instagram](#)



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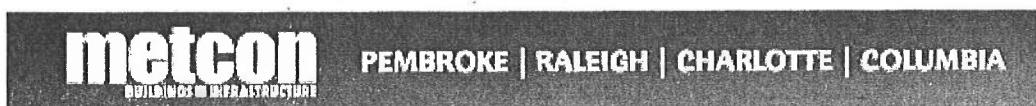
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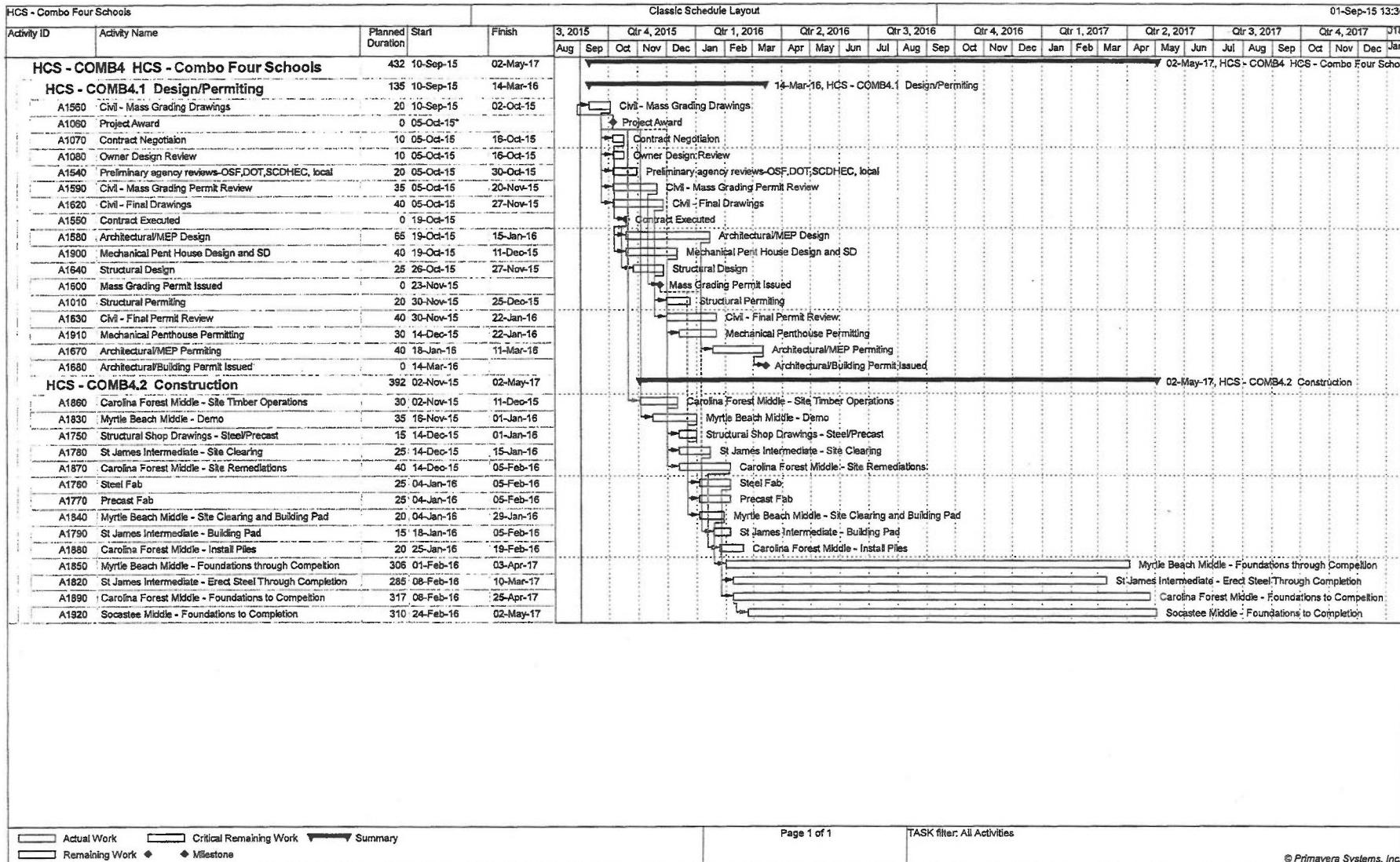
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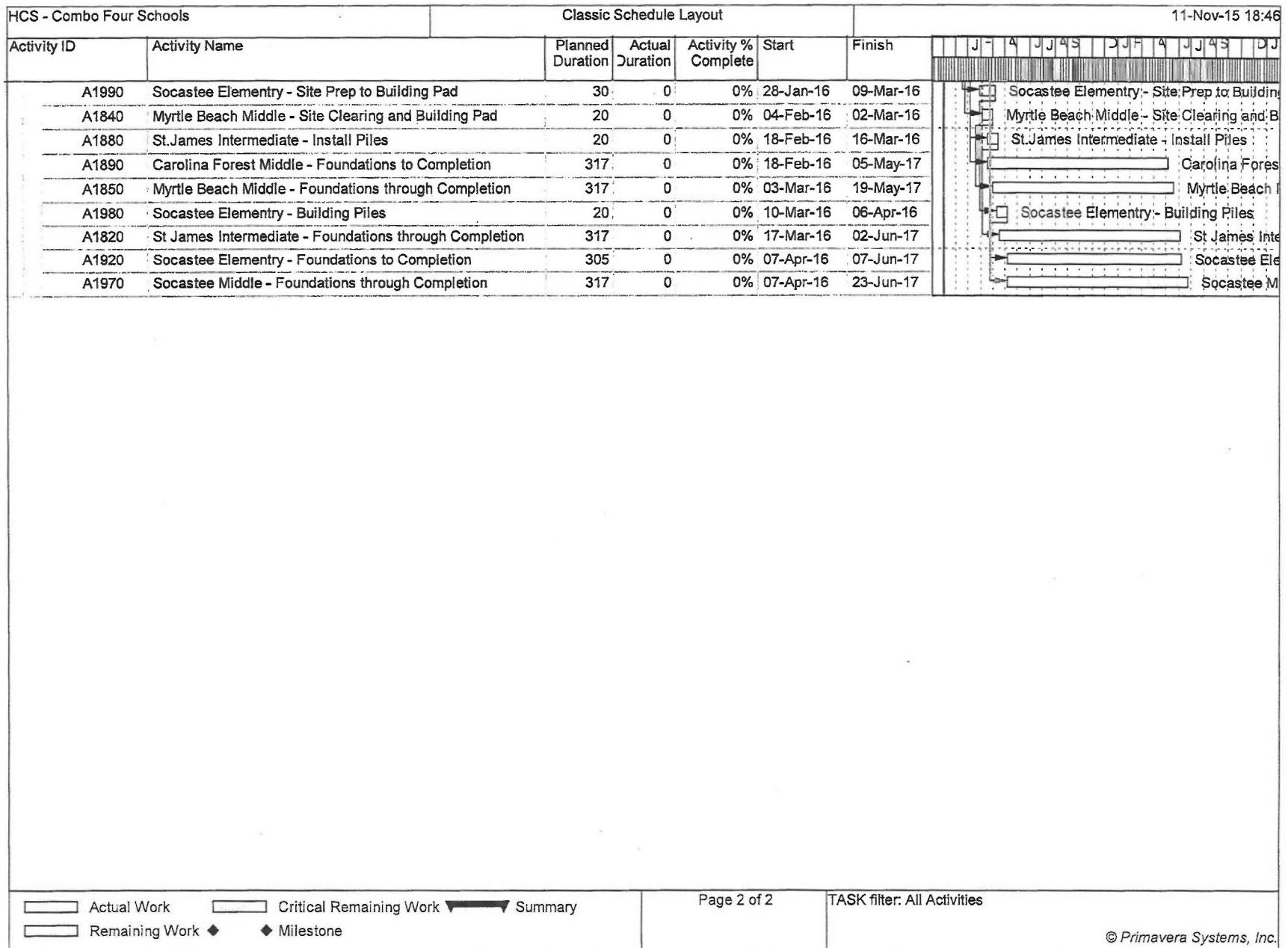


HCS - Combo Four Schools		Classic Schedule Layout					11-Nov-15 18:46																			
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Actual Work Critical Remaining Work Summary
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Page 1 of 2 TASK filter: All Activities

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[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA

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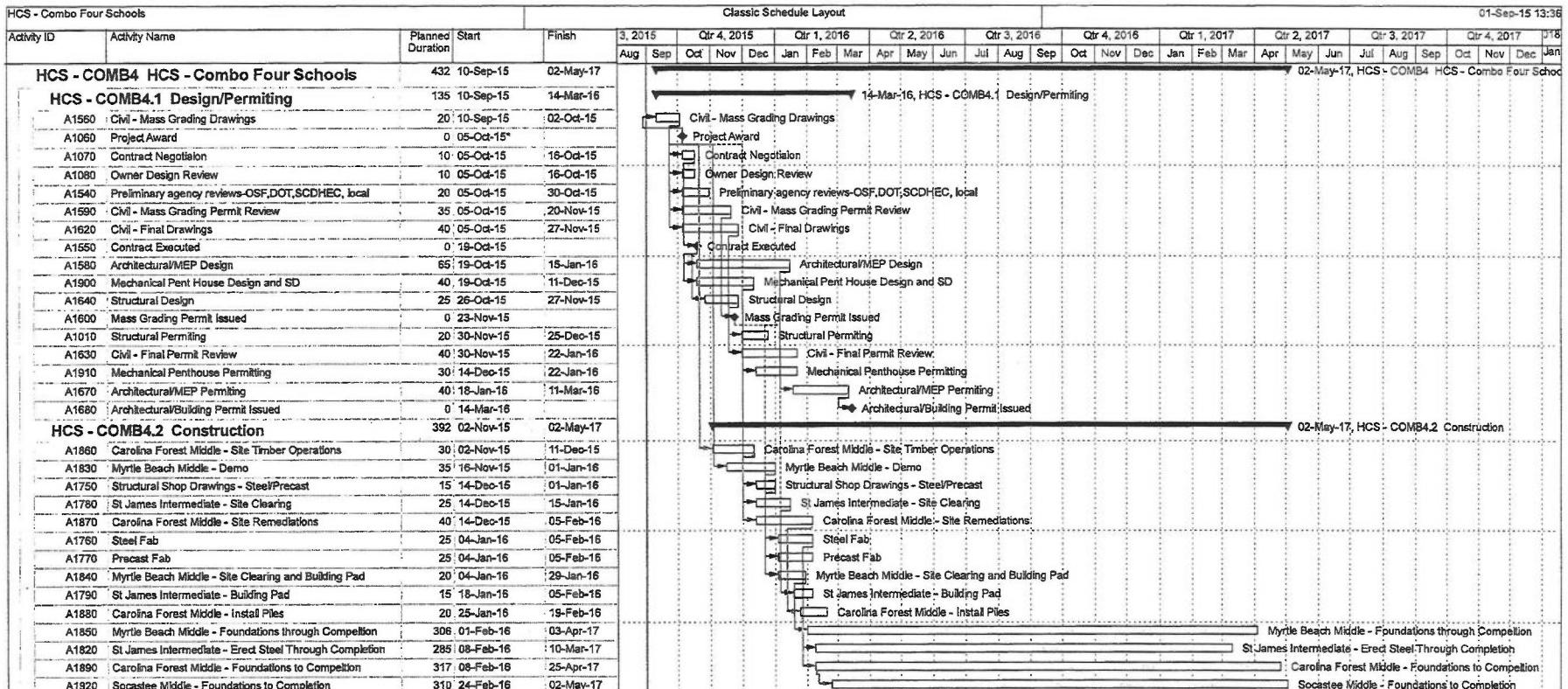
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PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA



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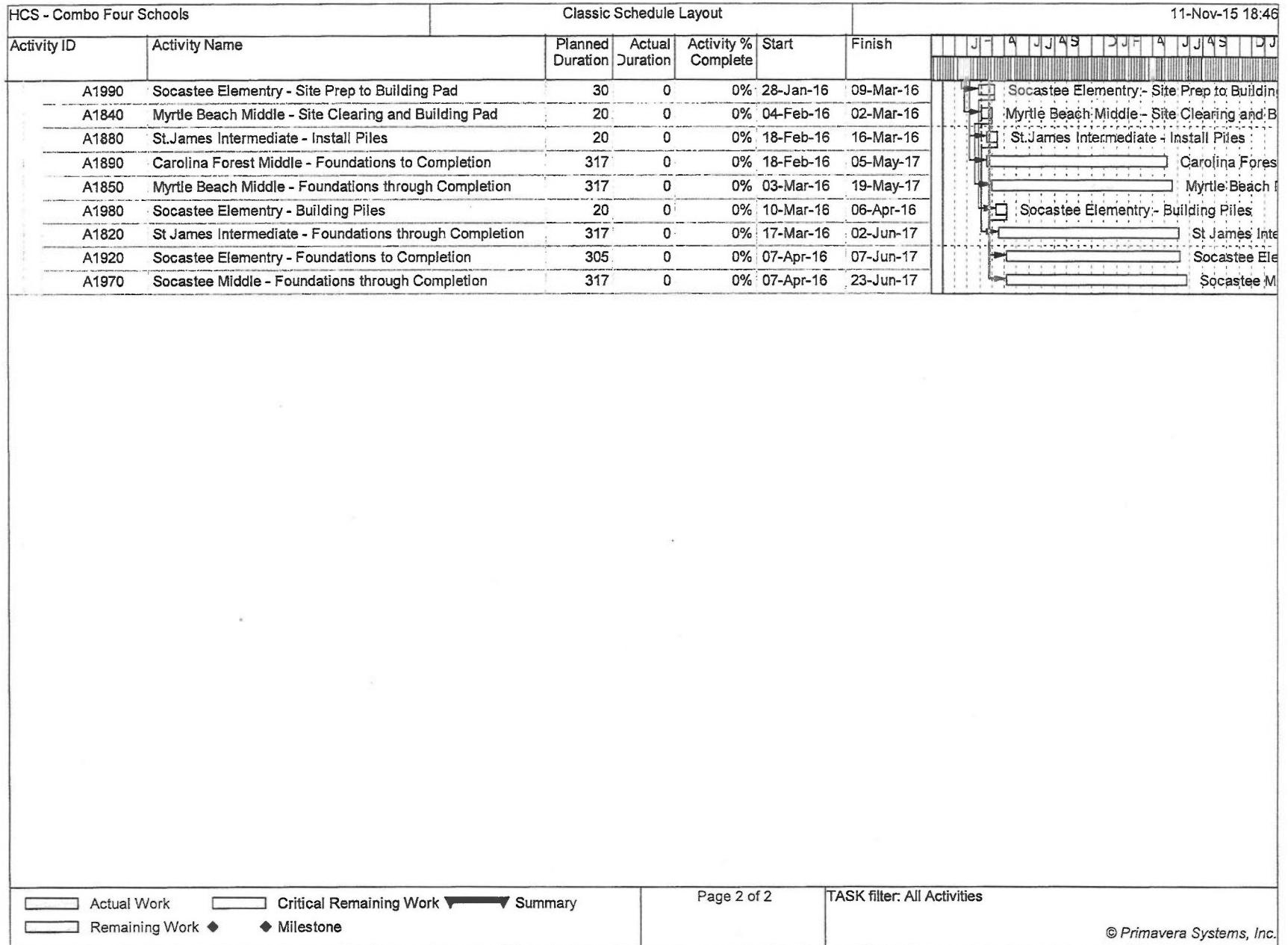
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TASK filter: All Activities

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A1870	Carolina Forest Middle - Site Prep and Building Pad	30	0	0%	07-Jan-16	17-Feb-16									
A1760	Steel Fab	25	0	0%	28-Jan-16	02-Mar-16									
A1770	Precast Fab	25	0	0%	28-Jan-16	02-Mar-16									
<input type="checkbox"/> Actual Work		<input type="checkbox"/> Critical Remaining Work		▼ Summary				Page 1 of 2		TASK filter: All Activities					
<input type="checkbox"/> Remaining Work		◆ Milestone													

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Sheri L. Wainscott

From: Keith R. Powell
Sent: Monday, November 16, 2015 2:26 PM
To: John Gardner; Ara Heinz (AHeinz@horrycountyschools.net); Mark Wolfe
Subject: draft update 646781 AIA A141 Ex A.docx
Attachments: 646781 AIA A141 Ex A.docx

For review & comments.
646781 AIA A141 Ex A.docx

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
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DRAFT AIA Document A141™ - 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

«
New Carolina Forest Middle Schools
(per Owner's Request for Proposals No. 1415-91)
Horry County School District
« »

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,
335 Four Mile Rd.
Conway, SC 29528
« »
« »

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC
333 Fayetteville St., Suite 225
Raleigh, NC 27601
« »
« »

The Owner and Design-Builder hereby amend the Agreement as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

[« X »] Stipulated Sum, in accordance with Section A.1.2 below

[« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[« »] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be forty-five million nine hundred thirty thousand two hundred twenty-seven dollars → (\$ «45,930,227.00»), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

«→»

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

«→»

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

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User Notes: (1381527406)

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « » (\$ « »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

« »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » day of the « » month. If an

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Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed-Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed-Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed-Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «three and one-half» percent («3.5» %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «three and one-half» percent («3.5» %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of « » percent (« %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of « » percent (« %) from that portion of the Work that the Design-Builder self performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- 2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 Add the Design-Builder's Fee, less retainage of « » percent (« »%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 Subtract retainage of « » percent (« »%) from that portion of the Work that the Design-Builder self-performs;
- 5 Subtract the aggregate of previous payments made by the Owner;
- 6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- 7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » (« ») days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« _____ calendar days from the issuance of a Notice to Proceed. »

Portion-of-Work

Substantial-Completion-Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« Liquidated damages per A141-2014. »

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ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91. :

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Number	Title	Date	Pages

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

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§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

As stated in the Design Requirements (as amended by addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91. «»

.2 Contingencies

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§ A.3.1.6 Design-Builder's assumptions and clarifications:

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User Notes:

« »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

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.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

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ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit-of-time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the

Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder, any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;

- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.[number not used]

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

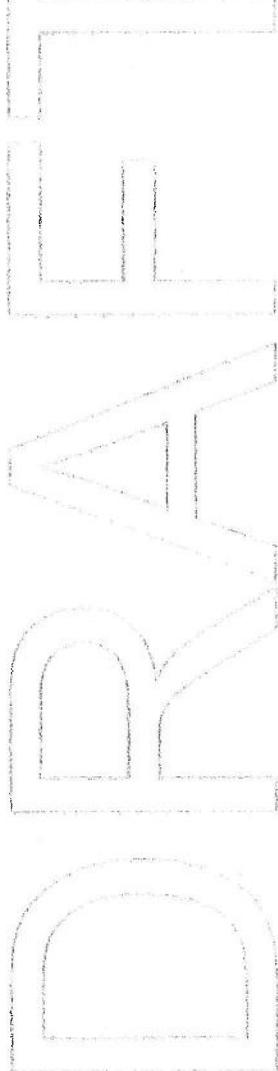
This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

John Gardner, Chief Financial Officer »»
(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member »»
(Printed name and title)



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User Notes:

12

{1381527406}

Sheri L. Wainscott

From: Keith R. Powell
Sent: Monday, November 16, 2015 2:11 PM
To: Mark Wolfe; Ara Heinz (AHeinz@horrycountyschools.net)
Subject: FW: Horry allowance

Please advise.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Friday, November 13, 2015 12:15 PM
To: Keith R. Powell
Subject: Horry allowance

Keith,
I recall the board approving funds to restore the owner contingency. I assume that contingency will be held outside of our contract, however if we want it inside of our contract for some reason we can do that but we would have to increase The contract amount by the amount of the owner contingency. I am fine with it either way.
Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Monday, November 16, 2015 2:05 PM
To: John Gardner; Ara Heinz (AHeinz@horrycountyschools.net); Mark Wolfe
Subject: updated 673757_2 141 main - Working Draft - (1).docx
Attachments: 673757_2 141 main - Working Draft - (1).docx

673757_2 141 main - Working Draft - (1).docx

For review & comment. Changed sections are marked, unchanged (from last draft) not marked.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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DRAFT AIA Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 19th day of November in the year two thousand fifteen (2015). »
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd | PO Box 260005
Conway, SC 29528
District Office Phone 843.488.6700 »
« »
« »

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the project is located.

and the Design-Builder:

(Name, legal status, address and other information)

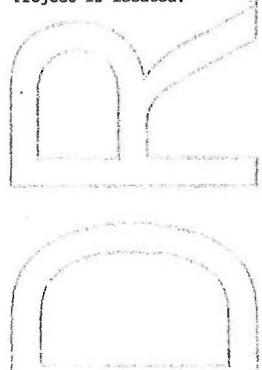
FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

for the following Project:

(Name, location and detailed description)

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91)

The Owner and Design-Builder agree as follows.



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- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
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- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
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- 10 PROTECTION OF PERSONS AND PROPERTY
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- 16 SCOPE OF THE AGREEMENT

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

«Per "Design Requirements" published for Solicitation No. 1415-91.»

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

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User Notes: (1346784345)

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« Per "Design Requirements" published for Solicitation No. 1415-91. »

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« Per "Design Requirements" published for Solicitation No. 1415-91. »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« Per "Design Requirements" published for Solicitation No. 1415-91. »

§ 1.1.5

« Number not used. »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015. »

§ 1.1.7 The Owner's design and construction milestone dates: Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

« SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601. »

.2 Consultants

« Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91. »

.3 Contractors

« Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91. »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3). »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)

Horry County Schools

Facilities Department, 1160 E Highway 50

Conway, SC 29526 »

«m.wolfe002@horrycountyschools.net »

«843.488.6965 »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

«N/A »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

«Functional Performance Consultant (TBD) »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

«Robbie Ferris, S.C. AR.6106 »

«FIRSTFLOOR ENERGY POSITIVE LLC, 333 Fayetteville St., Suite 225, Raleigh, NC 27601 »

« 919-573-6350 »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

[«X»] Litigation in a court of competent jurisdiction, nonjury before a circuit judge in Horry County, SC.

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§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the

Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder may invoice the Design-Builder may invoice the owner for not more than five hundred thousand dollars (\$500,000) for its Work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

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§ 2.1 number not used]

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.) of 5% p.a.

N/A

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

Building Permit and Other Permits and Fees: No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

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User Notes: (1346784345)

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner through its project management software data requirements.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not

exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear.

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and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

[Numbers §4.2 & §4.3 intentionally not used]

§ 4.4 Design-Builder's Construction Proposal

§ 4.4.1 The Design-Builder's Construction Proposal shall include the following:

- .1 A list of the documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's original Design Requirements and the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion (or phased beneficial occupancy, if applicable and acceptable to the Owner);
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Construction Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

Maintenance of Record Drawings: The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

Professional Certifications: When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

Contractor's Quality Control Program: The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksit Superintendent(s).

1. **Compliance with Employment Laws:** By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:
 - A. Title VII of the Civil Rights Act of 1964, as may be amended.
 - B. Age Discrimination in Employment Act of 1964, as may be amended.
 - C. Title I of the Americans Disabilities Act of 1990, as may be amended.
 - D. Equal Pay Act of 1963, as may be amended.
 - E. Fair Labor Standards Act, as may be amended.
 - F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
 - G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

Employment Taxes and Benefits: The District shall not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

Project Key Staff – Project Manager: The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager identified in the *Scope of Work (Exhibit A)* or the duties and status of the Project Manager during the course of the project without approval of the District.

Project Key Staff -- Worksite Superintendent(s): The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies

the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent identified in the *Scope of Work (Exhibit A)* or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

Worksite Communications: The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder

shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

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§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

§ 5.8 Documents and Submittals at the Site

In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the

Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 . The change in the Work;
- .2 . The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 . The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; provided that costs of premiums, permits, and taxes that are based on marginal additions to an existing sum or quantity may all be reasonably estimated subject to correction at the time of Final Payment or other agreed time when the actual costs of the marginal additions can be determined or mutually agreed upon; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

Allowable Overhead and Profit Charges: Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.
- C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

Retainage: The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the *Contract Agreement* and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the *Contract Agreement* and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be

retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. **The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of debts/claims submitted with final documents.**

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

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§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing land development, zoning, and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or

elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be

responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during

the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of five (5) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the five (5) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within twenty-one days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period

required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year-two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provides the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of

the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on that executed Work, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.5; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work and otherwise available under this Agreement.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing, (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4 located.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

Conduct of the Architect's Principal, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Architect shall be responsible for ensuring compliance by the Architect and any employees, agents or representatives of the Architect, including all Design Consultants, to the following:

- A. **No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.**
 - B. No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.
 - C. **No improper attire, actions or gestures while on any District property.**
- No smoking on District property in conformance to Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. Secure SLED (State Law Enforcement Division) criminal background checks on all the Architect's Principals, employees, agents, and representatives performing work on District property, and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives of the Architect and Design Consultants having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the respective Architect and Design Consultant and made available to appropriate District personnel or the District's legal counsel immediately upon request.

Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

Drug-Free Workplace

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws, as may be amended.

Right Audit Project

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order (Attachment E) data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no

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additional cost to the District. This requirement shall survive termination or completion of the Agreement.

Traffic Control On-Site and Off-Site: The Contractor shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Contractor shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

Safety Designee: The Contractor shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

Licenses and Permits: During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

Iran Divestment Act: The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtml>. Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List.

Immigrant Workers: The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

S.C. Code § 8-14-40 Compliance: Design-Builder certifies that the Design-Builder will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

ARTICLE 16. SCOPE OF THE AGREEMENT

ARTICLE IV - SCOPE OF THE AGREEMENT
§ 16.1 This Agreement is comprised of the following documents listed below:

- This Agreement is comprised of the following documents listed below:

 - .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
 - .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
 - .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
 - ~~.4~~
 - .5 AIA Document E203™-2013, Building-Information-Modeling and Digital-Data Exhibit, if completed, or the following:

• 17 •

,6 Other:

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User Notes: (1346784345)

« »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

John K. Gardner, Chief Financial Officer
(Printed name and title)

DESIGN-BUILDER (Signature)

«Robert Ferris, Authorized Member »»
(Printed name and title)